

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

TANISH J. LOVE,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-08-985-F
)	
STATE OF OKLAHOMA,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

The undersigned recommends dismissal of the action without prejudice to refiling.

The Court granted pauper status on September 22, 2008, and ordered an initial payment of \$20.80 by October 13, 2008. Order Granting Leave to Proceed *in Forma Pauperis* at p. 1 (Sept. 22, 2008); *see* Prison Litigation Reform Act, 28 U.S.C. § 1915(b)(1)(A)-(B). This Court warned Mr. Love “that unless by [October 13, 2008] he has either (1) paid the initial partial filing fee, or (2) shown cause in writing for the failure to pay, this action will be subject to dismissal without prejudice to refiling.” Order Granting Leave to Proceed *in Forma Pauperis* (Sept. 22, 2008). To date, however, the Plaintiff has not made the \$20.80 payment or demonstrated good cause for his failure to pay.¹

The record does not reflect any excuse for Mr. Love’s failure to pay. When the action began, Mr. Love had \$150.48 in his institutional accounts. Motion for Leave to Proceed *in*

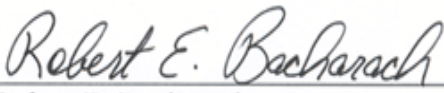
¹ The Court ordered the Petitioner to show cause why the action should not be summarily dismissed on the merits. Subsequently, the Plaintiff requested an extension of time to respond to the show cause order, but did not seek additional time for payment of the initial partial filing fee.

Forma Pauperis at 3 (Sept. 18, 2008). Thus, apparently had the resources to pay the initial installment of \$20.80, but chose not to do so. In these circumstances, the Court should dismiss the action without prejudice to the filing of a new suit. *See Cosby v. Meadors*, 351 F.3d 1324, 1326-33 (10th Cir. 2003) (upholding dismissal of a federal inmate's civil rights complaint based on noncompliance with orders requiring installments on the filing fee or to show cause for the failure to pay).

The Plaintiff is advised of his right to object to this report and recommendation by November 11, 2008. *See* W.D. Okla. LCvR 72.1. If the Plaintiff does object, he must file a written objection with the Court Clerk for the United States District Court, Western District of Oklahoma. The Plaintiff is further advised that if he does not timely object, he would waive his right to review by the Tenth Circuit Court of Appeals. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

The referral is terminated.

Entered this 22nd day of October, 2008.



Robert E. Bacharach
United States Magistrate Judge